

State of Wisconsin, Department of Revenue

DIVISION OF STATE AND LOCAL FINANCE, BUREAU OF PROPERTY TAX, 2135 Rimrock Road, P.O. Box 8971, MS6-97, Madison, WI 53708-8971

REAL ESTATE TRANSFER NEWS (RETN)

March 2005

The following questions and answers are given as general interpretations of the Wisconsin Administrative Code and Statutes. Should you have any questions, please write to:

Wisconsin Department of Revenue
Division of State & Local Finance
Bureau of Property Tax
P.O. Box 8971, MS 6-97
Madison, WI 53708-8971

This RETN may be found on the Internet at <http://www.dor.state.wi.us/ust/retn.html>

- 1Q. I have a customer who brought a vacant lot. Lot 1 had been transferred to the buyer and now the buyer decided he didn't want that lot but wanted lot 2 instead. Buyer is now going to trade lot 1 back to the seller in exchange for lot 2. There will be no adjustment to the original purchase price. Can they exempt both exchange deeds under s. 77.25(3), Stats.?**
- A.** No, transfer fees are due on both exchanged deeds. Exemption 3 does NOT apply to a conveyance where the buyer has "changed" their mind. An exchange of real property is subject to transfer fee per Tax 15.02(2), Wis. Adm. Code. There are two separate and distinct conveyances involved and the value should be separately determined for each. In the question above where the values are identical, there would be a fee on each fair market value as the values do not "off set" each other. In situations where the values differ: If "A" conveys parcel 1 to "B" worth \$50,000 and "B" conveys parcel 2 to "A" worth \$45,000 plus \$5,000 cash, the fee for the "A" to "B" conveyance is on \$50,000 and the "B" to "A" conveyance is on \$45,000.
- Chapter Tax 15 can be found at: <http://www.legis.state.wi.us/rsb/code/tax/tax015.pdf>
- 2Q. Why are there two dates on the real estate transfer return: "Date Recorded" and "Date of Conveyance?" Aren't they the same?**
- A.** No. The "Date of Conveyance" is the date the instrument is signed and delivered per s. 706.02(1), Stats. The "Date Recorded" is the date the Register of Deeds records the instrument of conveyance. They may be the same date if both actions occur on the same day.
- 3Q. A trustee is settling a trust that contains property. Can exemption 11 be used for conveying the property to the beneficiaries from the trust?**
- A.** No, the use of exemption per s. 77.25(11), Stats. is by will, decent or survivorship. Since the property is in a trust, the use of exemption s. 77.25(9), Stats., can be used "from a trustee to beneficiary without actual consideration." Exemption 11 is to be only used with a decedent's estate "by will, decent or survivorship."

4Q. Property is in a living trust. The trust uses the same social security number as the settler/trustee. The trustee (father) now wants to convey the real estate to a limited liability company (LLC) whose only members are his children. Is there a fee due if we deed the real estate directly to the LLC?

A. Yes, a fee is due since only members of the LLC are the children, and not the father/trustee. Exemption in s. 77.25(15s), Stats., requires that the grantor (trustee) be a member along with the other family members. The primary beneficiary is still living, so the LLC is not the beneficiary under s. 77.25(9), Stats. This conveyance could be exempt if the following steps are taken:

1. Convey from the trust to the father who is the beneficiary under s. 77.25(9), Stats.
2. Father conveys by gift to children under exemption s. 77.25(8), Stats.

To be exempt, the two step procedures must be taken as determined in other court decisions such as James E. Turner and L. Jean Turner, Husband and Wife, d/b/a Epco Limited Partnership of Wisconsin Petitioners-Appellants, v. Wisconsin Department of Revenue, COURT OF APPEALS, DISTRICT II, Appeal No. 03-1517. This case can be found on the State Bar web site at: <http://www.wisbar.org/res/capp/2004/03-1517.htm>

5Q. The March 2004 RETN, 3Q stated that “Does the agency portion of the return need to be completed if the grantor is an entity such as a trust, LLC, partnership, etc?” The answer was “Yes”. Could you clarify when Section X needs to be completed when a person is signing the transfer return for an entity?

A. Section X, Certification “Agent” information is require to be completed as we need a persons name and address for contacting if there are questions regarding the conveyance. Whenever someone signs on behalf of an entity (trust, LLC, corporation, etc), Section X is required to be completed. For signatures for a trust, exceptions can be made if the person signing is also the trustee and their name appears with the name of the trust.

6Q. I am having trouble locating certain questions and answers in the RETNs on your website. Is there an “easy” way to search for specific exemptions?

A. Yes, there is a “search engine” available that just searches the Department of Revenue web site.

First, go to our web site “REAL ESTATE TRANSFER” at:

<http://www.dor.state.wi.us/ust/retn.html>

Located in the upper left corner is a box labeled “Search Revenue”. Type in the exemption number you are looking for, such as “77.25(8)”, then “click on “GO”

Search results will show all the RETNs that contain any reference to the exemption. You will have to go to each and see if that question and answer pertains to what you are seeking. You can also type in certain words that the question and answer may contain. When using words, results will include other sites at the Department of Revenue, but you will normally only be looking for the results that contain “Real Estate Transfer News.”